

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:08cr6-KS-MTP

GREGORY FOSTER

ORDER

This matter is before the court on defendant's motion to dismiss for speedy trial violation [9]. Having considered the motion and being fully advised in the premises, the court finds that the motion is not well-taken and should be denied.

During defendant's arraignment on May 22, 2008, the Magistrate Judge entered an order [7] setting defendant's trial for the two-week trial calendar scheduled to begin at 9:00 a.m. on June 16, 2008. Although defendant did not object at the arraignment, defendant now argues that the trial setting violates the Speedy Trial Act, which states: "Unless the defendant consents in writing to the contrary, the trial shall not commence less than 30 days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se." 18 U.S.C. § 3161(c)(2).

The Fifth Circuit has held that in light of the purpose of this statute - to ensure that the defendant has sufficient time to prepare for trial - and in light of Congress' failure to provide a remedy for its violation, a defendant must show that he was prejudiced by the untimely commencement of trial in order to establish a violation of this section. *See U.S. v. Marroquin*, 885 F.2d 1240, 1245 (5th Cir. 1989) (citing *U.S. v. Grosshans*, 821 F.2d 1247, 1252-53 (6th Cir. 1987)). Since his trial has not yet begun, defendant cannot demonstrate any prejudice as a result of the trial setting. Therefore, the appropriate remedy is not dismissal of the indictment but,

rather, to continue the trial and re-set it for a trial date that complies with the Speedy Trial Act.

IT IS, THEREFORE, ORDERED and ADJUDGED that the motion to dismiss for speedy trial violation [9] is denied and the trial in this matter is continued until the August 2008 trial term. A separate order will be entered by the assigned Magistrate Judge re-setting the trial date and any associated case deadlines.

SO ORDERED this the 28th day of May, 2008.

s/ Keith Starrett

United States District Judge